

Seroech v. Telungalek Ra Alkemim, 14 ROP 141 (2007)

**KINSANG SEROECH,
Appellant,**

v.

**TELUNGALEK RA ALKEMIM,
Appellee.**

CIVIL APPEAL NO. 06-012
LC/E 05-024

Supreme Court, Appellate Division
Republic of Palau

Argued: July 2, 2007

Decided: July 6, 2007

Counsel for Appellant: Raynold B. Oilouch

Counsel for Appellee: J. Roman Bedor

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;
LOURDES F. MATERNE, Associate Justice.

Appeal from the Land Court, the Honorable ROSE MARY SKEBONG, Associate Judge,
presiding.

MATERNE, Justice:

Appellant Kinsang Seroech¹ appeals from the Land Court's determination of ownership concerning a land known as "Alkemim" in Ngaraard State. The land is designated as Tochi Daicho Lot 1883 and Lot No. E12-014 on the Bureau of Lands and Surveys Worksheet Map No. 99-E12. The Land Court's determination of ownership in favor of Telungalek ra Alkemim is affirmed.

I. BACKGROUND

In 2000, Judge Keptot heard testimony regarding Tochi Daicho Lot 1883 and several other properties in Ngkeklau, Ngaraard State. When Judge Keptot retired, Judge Skebong conducted a second hearing regarding Lot 1883. Five witnesses testified at the hearing that was held in August 2005. Appellant Kinsang Seroech ("Kinsang") claimed Alkemim as the heir of Seroech, who is listed on the Tochi Daicho as the owner of Lot 1883. In the alternative, Kinsang argued that Seroech's closest relatives had signed a deed of transfer in 1975 granting him exclusive rights over and ownership of Lot 1883. The other four witnesses testified that the

¹The Court adopts the spelling of names used by the Land Court.

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property belonged to the Lineage of Rbechong or the Lineage of Alkemim, both of which were defined to include the same group of people, namely Sikyang Omisong, Sekool Ormengii, Tosko Sebalt, Namiko Adelbai, and their ¶142 children. After weighing the evidence, the Land Court determined that there was clear and convincing evidence that the Tochi Daicho listing was in error, that Kinsang had failed to prove that any interest Seroech may have had in Alkemim passed to him, and that the 1975 deed of transfer in Kinsang's favor was ineffective. The Land Court awarded Lot 1883 to Telungalek ra Alkemim in February 2006. This appeal followed.

II. STANDARD OF REVIEW

We review the trial court's findings of fact for clear error. *Ongidobel v. ROP*, 9 ROP 63, 65 (2002). Under this standard, the factual determinations of the lower court will not be set aside if they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless this Court is left with a definite and firm conviction that a mistake has been made. *Espong Lineage v. Airai State Pub. Lands Auth.*, 12 ROP 1, 4 (2004).

III. ANALYSIS

The Land Court found that there was clear and convincing evidence that Alkemim belongs to the Lineage and that the designation of Seroech on the Tochi Daicho was in error. There is evidence in the record to support such a finding. Witnesses testified that members of the Lineage have resided on and used Alkemim for more than seventy years without having to seek permission from anyone and without objection. Alkemim is the site of a stone platform built by Rbechong, Tosko's and Namiko's uncle, and contains the remains of various members of the Lineage, including Rbechong, Sekool's father, grandmother, and great grandfather, and Sikyang's grandchild. There was also evidence that Seroech placed his name on the property during the Japanese land survey against the wishes and without the knowledge of the senior members of the Lineage.² When Namiko's mother, Sekeiur, questioned Seroech's sister, Ngesmaos, regarding the ownership of Lot 1883, Sekeiur was assured that the property would be returned to the Lineage through Sekeiur's son, Omisong, who had been adopted by Ngesmaos. The story told by Omisong's descendants is generally consistent with this history: Omisong was given the property for services rendered to Seroech and Ngesmaos with the understanding that it would not be given out to any individual because the burial platform was located there.

Kinsang argues that because there was conflicting evidence presented at trial, "a reasonable trier of fact could [not] have found, by clear and convincing evidence, that the Tochi Daicho presumption had been rebutted. . . ." *Ongesii v. Children of Silmai*, 12 ROP 131, 132 (2005). It is true that the claimants presented two competing stories. According to Kinsang, Seroech was the sole owner of Alkemim through his mother, Berei, who was adopted by a woman of Mesial and had no other relatives in the area with whom she would have had to share title. Kinsang denied that the other claimants used Alkemim, suggested that any such use was with ¶143 Seroech's permission or without his knowledge, and testified that he had lived on the

²At one point, even Kinsang suggests that Seroech's individual ownership of Alkemim arose from the Japanese land survey rather than through a devise from his mother. See Trial Transcript at 69 (Seroech "came to own these properties in 1938 during the land survey.").

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property until the mid-1950's.

After hearing the testimony of the witnesses, the Land Court adopted the version of events described by Namiko and the other Lineage members, implicitly rejecting much of Kinsang's testimony. It is well-settled that "the trial judge is best situated to make credibility determinations and that we will generally defer to those decisions." *Tmiu Clan v. Ngerchelbuchebe Clan*, 12 ROP 152, 154 (2005). The fact that testimony is contested does not preclude a finding that the evidence is clear and convincing, especially where the trial judge disbelieves a crucial witness for the losing side. *Filibert v. Ngirmang*, 8 ROP Intrm. 273, 278 (2001). A review of the trial transcript reveals a situation where four of the five witnesses provided a fairly detailed and consistent history of Alkemim, whereas Kinsang's version had little to do with the land itself and contained inconsistencies which raised questions regarding the accuracy of his story and/or his credibility.

The Land Court ultimately rejected much of Kinsang's testimony, including his testimony regarding Berei's ownership of Alkemim, Rbechong's involvement with the land, Omisong's and Sekool's use of the land, Elton's burial site, Kinsang's ties to Alkemim, and Kinsang's right to inherit from Seroech. After weighing the evidence it found credible and taking judicial notice of the importance of odesongel to family groups, the Land Court concluded that there was clear and convincing evidence that the Tochi Daicho listing was in error and that Seroech did not individually own Alkemim. The Land Court found that the other claimants, who together form a group identified as Telungalek ra Alkemim, own the land. Because both of these findings are supported by the credible evidence contained in the record, the Land Court's determination of ownership will not be disturbed on appeal.

Kinsang also asserts that the Land Court made three clearly erroneous factual findings, none of which is subject to the clear and convincing standard applied above. First, Kinsang argues that the Land Court committed error when it awarded Alkemim to Telungalek ra Alkemim which, according to all of the witnesses, does not include Kinsang or his grandfather, Seroech. The Land Court did not make any findings regarding the membership of Telungalek ra Alkemim: the determination of ownership was in favor of the Lineage without identifying its members. At oral argument, counsel for the Lineage conceded that Kinsang may be a member of the Lineage. If, despite that concession, membership in Telungalek ra Alkemim gives rise to a justiciable controversy in the future, it will have to be determined in a later civil action, not in this appeal.

Second, Kinsang argues that the Land Court's finding that Kinsang was Seroech's grandson was based on a misunderstanding of Namiko's testimony and constitutes error. Although Namiko's testimony at page 106 of the Trial Transcript ("T.T.") is ambiguous, there is ample evidence in the record to support the finding that Kinsang was the son of Tirou, who was the daughter of Seroech. Namiko clearly testified that Tirou is a child of Seroech and that "Kinsang is a child of Tirou." T.T. at 43. Even Kinsang testified that ". . . I am the only child of his only L144 daughter," an admission that is fatal to Kinsang's argument on appeal. T.T. at 70.³

³It should also be noted that the Appellate Division has previously recognized Kinsang as Seroech's grandson in *Taro v. Sungino*, 11 ROP 112, 113 (2004).

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Lastly, Kinsang maintains that the Land Court's rejection of the 1975 Deed of Transfer was erroneous. Four individuals signed the purported Deed of Transfer, namely Kinsang, his mother Tirou, Namiko's adopted brother Tiobech, and Bukourou Recheungel. Having found that Seroech did not own Alkemim, the Land Court was more than justified in concluding that neither Tirou nor Kinsang had the authority to convey the property. Nor is there any reason to believe that Tiobech or Bukourou had the power to represent and convey the interests of Telungalek ra Alkemim. Sekeiur, Tiobech's natural aunt and adopted mother, was still alive when the deed was recorded and yet she was not involved in the purported transfer. It appears that Kinsang sought the signatures of younger Lineage members only because they were willing to acknowledge his claim to Alkemim, not because they possessed any authority over the distribution of Lineage lands. *See* T.T. at 80. The Land Court's rejection of the 1975 Deed of Transfer is amply supported in the record.

IV. CONCLUSION

In summary, the Land Court's determination of ownership in favor of Telungalek ra Alkemim is affirmed. Given the Land Court's credibility findings, a reasonable fact finder could conclude that there was clear and convincing evidence that the Tochi Daicho listing of Seroech as the owner of Lot 1883 was in error. There is also ample evidence in the record to support the Land Court's findings that Alkemim belongs to Telungalek ra Alkemim, that Kinsang was not Seroech's son, and that the 1975 Deed of Transfer was ineffective.